

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA**

<p>Lindell Management LLC, Petitioner, v. Robert Zeidman, Respondent.</p>	<p>Case No. 0:23-cv-01759-JRT-DJF LINDELL MANAGEMENT'S OPPOSITION TO RESPONDENT'S REQUEST FOR CONSOLIDATION</p>
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In opposition to the Request for Consolidation by Respondent Robert Zeidman (“Zeidman”), Petitioner Lindell Management LLC (“Lindell Management”) states as follows:

1. On April 19, 2023, an American Arbitration Association panel of arbitrators issued an award against Lindell Management and in favor of Zeidman. Petition for Order Confirming Arbitration Award (“Zeidman Petition”), as filed in this Court but proceeding under case No. 23-CV-01433, ¶ 8.
2. On May 18, 2023, Lindell Management filed this action in the District Court of Hennepin County, Minnesota (Case No. 27-CV-23-7502) to vacate the arbitration award (“State Court Action”). Notice of Removal, ECF No. 1, ¶¶ 1–2.
3. The very next day, May 19, 2023, Zeidman filed a federal action in the U.S. District Court of Minnesota (Case No. 23-CV-01433) (the “later filed Federal Court Action”) to confirm the same arbitration award that Lindell Management seeks to vacate in the State Court Action.

4. In the later filed Federal Court Action, Zeidman’s attorneys expressly acknowledged that they were aware Lindell Management had already filed the State Court Action. Zeidman Petition, ¶ 12.

5. On June 12, 2023, Zeidman filed a Notice of Removal in the State Court Action (which then became Case No. 23-CV-01759) (the “Removed Action”). Notice of Removal, ECF No. 1. In the Notice of Removal, Zeidman requested that the Removed Action be consolidated with the later filed Federal Court Action. *Id.* ¶¶ 15–16.

6. Lindell Management opposes consolidation and has filed a Motion to Dismiss the later filed Federal Court Action.¹ If the Motion to Dismiss is denied, Lindell Management requests that the two actions be consolidated into the first-filed Removed Action (Case No. 23-CV-01759).

7. Where two courts have concurrent jurisdiction, courts follow the first-to-file rule, giving priority to the first filed action over the later filed action. *Orthmann v. Apple River Campground Inc.*, 765 F.2d 119, 121 (8th Cir. 1985). Courts consider three factors in applying the first-to-file rule: (1) the chronology of events; (2) the similarity of the parties involved; and (3) the similarity of the issues or claims at stake. *Siruk v. Robinhood Fin.*, LLC, No. 21-CV-0415, 2021 U.S. Dist. LEXIS 96346, at *3 (D. Minn. Mar. 31, 2021). Here, all three factors support dismissal of the later filed Federal Court Action.

8. First, the chronology of events show Lindell Management filed in state court first before Zeidman later filed in federal court. Second, the parties in both actions are also

¹ On June 16, 2023, concurrent with this opposition to consolidation, Lindell Management filed a Motion to Dismiss in the later filed Federal Court Action.

the same. Third, the issues in both actions arise out of the same controversy and the identical dispute regarding whether the arbitration award is enforceable.

9. Zeidman's filing of the Federal Court Action appears to be an attempt to "usurp the priority generally given to the plaintiff's choice of forum" and manipulate the procedure applicable to this action. *Massachusetts Bay Ins. Co. v. G.M. Northrup Corp.*, No. 22-CV-699 (KMM/TNL), 2022 U.S. Dist. LEXIS 110110, at *7 (D. Minn. June 22, 2022). If Zeidman wants to bring counterclaims arising from the arbitration award, he can do so in the action that was first filed in this matter. Duplicative or piecemeal litigation is disfavored. *Slidell, Inc. v. Archer Daniels Midland Co.*, No. 02-4841 (MJD/JGL), 2003 U.S. Dist. LEXIS 15310, at *10 (D. Minn. Sep. 2, 2003).

REQUEST FOR RELIEF

Lindell Management respectfully requests that the Court dismiss the later filed Federal Court Action (Case No. 23-CV-01433). To the extent that the Court declines to dismiss the action, Lindell Management respectfully requests that the later filed Federal Court Action be consolidated into this case and proceed with the case number and caption herein, *Lindell Management LLC v. Robert Zeidman*, Case No. 23-CV-01759-JRT-DJF.

PARKER DANIELS KIBORT LLC

Dated: June 16, 2023

By: /s/ Andrew D. Parker

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